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6 **BEFORE THE**
7 **BOARD OF REGISTERED NURSING**
8 **DEPARTMENT OF CONSUMER AFFAIRS**
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation/Petition to
11 Revoke Probation Against:

12 **MARIA KAMILAH KLEINE**
13 **A.K.A. KAMILAH KHAN**
14 **741 W. Hackberry Drive**
15 **Chandler, AZ 85248**
16 **Registered Nurse License No. 648902**

17 Respondent.

Case No. 2012-537

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

18 **FINDINGS OF FACT**

19 1. On or about March 8, 2012, Complainant Louise R. Bailey, M.Ed., RN, in her official
20 capacity as the Interim Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs, filed Accusation/Petition to Revoke Probation No. 2012-537 against Maria
22 Kamilah Kleine, also known as Kamilah Khan, (Respondent) before the Board of Registered
23 Nursing. (Accusation/Petition to Revoke Probation attached as Exhibit A.)

24 2. On or about December 2, 2004, the Board of Registered Nursing (Board) issued
25 Registered Nurse License No. 648902 to Respondent. The Registered Nurse License expired on
26 April 30, 2008, and has not been renewed.

27 3. On or about March 8, 2012, Respondent was served by Certified and First Class Mail
28 copies of the Accusation/Petition to Revoke Probation No. 2012-537, Statement to Respondent,
Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code
sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to

1 California Code of Regulations, title 16, section 1409.1, is required to be reported and maintained
2 with the Board. Respondent's address of record was and is:

3 741 W. Hackberry Drive
4 Chandler, AZ 85248.

5 Respondent was also served with the same documents at the following address that came to the
6 attention of the Board:

7 2012 Maury Ave., Apt. 3 North
8 St. Louis, Missouri 63110

9 4. Service of the Accusation/Petition to Revoke Probation was effective as a matter of
10 law under the provisions of Government Code section 11505, subdivision (c) and/or Business &
11 Professions Code section 124.

12 5. On or about March 22, 2012, the aforementioned documents served at Respondent's
13 address of record were returned by the U.S. Postal Service marked "Not Deliverable As
14 Addressed, Unable To Forward." Regarding the documents served at the address in St. Louis,
15 Missouri, the First Class Mailing was not returned and the Certified Mailing receipt was returned
16 bearing the signature "Maria Kleine", with notification of a new address at 4464 Russell Blvd,
17 Apt. 1W, Saint Louis, MO 63110-3248.

18 6. Government Code section 11506 states, in pertinent part:

19 (c) The respondent shall be entitled to a hearing on the merits if the respondent
20 files a notice of defense, and the notice shall be deemed a specific denial of all parts
21 of the accusation not expressly admitted. Failure to file a notice of defense shall
22 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
23 may nevertheless grant a hearing.

24 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
25 the Accusation/Petition to Revoke Probation, and therefore waived her right to a hearing on the
26 merits of Accusation/Petition to Revoke Probation No. 2012-537.

27 8. California Government Code section 11520 states, in pertinent part:

28 (a) If the respondent either fails to file a notice of defense or to appear at the
hearing, the agency may take action based upon the respondent's express admissions
or upon other evidence and affidavits may be used as evidence without any notice to
respondent.

9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation/Petition to Revoke Probation No. 2012-537, finds that the charges and allegations in Accusation/Petition to Revoke Probation No. 2012-537, are true and correct by clear and convincing evidence.

10. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$680 as of April 10, 2012.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Maria Kamilah Kleine, also known as Kamilah Khan, has subjected her Registered Nurse License No. 648902 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Registered Nursing is authorized to revoke Respondent's Registered Nurse License based upon the following violations alleged in Accusation/Petition to Revoke Probation No. 2012-537 which are supported by the evidence contained in the Default Decision Evidence Packet in this case:

a. Business and Professions Code section 2761, subdivision (a)(4) in that in the matter entitled *Settlement Agreement Between Missouri State Board of Nursing And Maria Kleine, RN 119983*, the Missouri State Board of Nursing executed and issued a Joint Agreed Order, effective April 6, 2010, wherein Respondent voluntarily surrendered her license to practice as a registered nurse in the State of Missouri.

b. Violation of the terms and conditions of probation in Case No. 2002-175.

Respondent violated Probation Condition No. 2 by failing to inform the Board in writing within no more than 15 days of any address change and failing to maintain an active, current license status with the Board. Further, Respondent violated Probation Condition No. 4 by failing to provide written notice to the Board within 15 days of a change of residency or practice outside the

1 state and failing to notify the Board of the disciplinary action against her Missouri registered
2 nursing license.

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ORDER

IT IS SO ORDERED that Registered Nurse License No. 648902, heretofore issued to Respondent Maria Kamilah Kleine, also known as Kamilah Khan, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on OCTOBER 11, 2012.

It is so ORDERED SEPTEMBER 11, 2012

Raymond Mallef

FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

10874621.DOCX
DOJ Matter ID:SA2011102002

Attachment:
Exhibit A: Accusation/Petition to Revoke Probation

Exhibit A

Accusation/Petition to Revoke Probation

1 KAMALA D. HARRIS
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 JANICE K. LACHMAN
Supervising Deputy Attorney General
4 State Bar No. 186131
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 445-7384
Facsimile: (916) 327-8643
7 Attorneys for Complainant

8 BEFORE THE
BOARD OF REGISTERED NURSING
9 DEPARTMENT OF CONSUMER AFFAIRS
10 STATE OF CALIFORNIA

11 In the Matter of the Accusation and Petition to
Revoke Probation Against:

12 MARIA KAMILAH KLEINE
13 a.k.a. KAMILAH KHAN
14 741 W. Hackberry Drive
Chandler, AZ 85248
15 Registered Nurse License No. 648902

16 Respondent.

Case No. 2012-537
ACCUSATION AND PETITION TO
REVOKE PROBATION

17
18 PARTIES

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation and Petition to
20 Revoke Probation solely in her official capacity as the Interim Executive Officer of the Board of
21 Registered Nursing, Department of Consumer Affairs.

22 2. On or about December 2, 2004, the Board of Registered Nursing issued Registered
23 Nurse License Number 648902 to Maria Kamilah Kleine, also known as Kamilah Khan
24 (Respondent). The Registered Nurse License expired on April 30, 2008, and has not been
25 renewed.

26 DISCIPLINARY HISTORY

27 3. On October 27, 2004, pursuant to the Decision and Order in the matter entitled "In the
28 Matter of the Statement of Issues Against: Kamilah Khan," Case No. 2002-175, the Board of

1 Registered Nursing issued a Decision and Order, effective November 26, 2004, granting
2 Respondent's application for a Registered Nurse License. Upon issuance, the license was
3 immediately revoked; however, the revocation was stayed and Respondent's Registered Nurse
4 License was placed on probation for two (2) years with certain terms and conditions. Pursuant to
5 Probation Condition No. 4, the probationary period has been tolled since 2004. A copy of that
6 Decision and Order is attached as Exhibit A and is incorporated by reference.

7 JURISDICTION AND STATUTORY PROVISIONS FOR ACCUSATION

8 4. This Accusation is brought before the Board of Registered Nursing (Board),
9 Department of Consumer Affairs, under the authority of the following laws. All section
10 references are to the Business and Professions Code ("Code") unless otherwise indicated.

11 STATUTORY PROVISIONS

12 5. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part,
13 that the Board may discipline any licensee, including a licensee holding a temporary or an
14 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
15 Nursing Practice Act.

16 6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
17 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
18 licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the
19 Code, the Board may renew an expired license at any time within eight years after the expiration.

20 7. Section 2761 of the Code states:

21 The board may take disciplinary action against a certified or licensed nurse or deny
22 an application for a certificate or license for any of the following:

23 (a) Unprofessional conduct, which includes, but is not limited to, the following:

24 (4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary
25 action against a health care professional license or certificate by another state or territory
26 of the United States, by any other government agency, or by another California health care
professional licensing board. A certified copy of the decision or judgment shall be
conclusive evidence of that action.

27 8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
28 administrative law judge to direct a licensee found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 **FIRST CAUSE FOR DISCIPLINE**

4 (Out of State Discipline)

5 9. Respondent is subject to disciplinary action under section 2761, subdivision (a)(4) in
6 that in the matter entitled *Settlement Agreement Between Missouri State Board of Nursing And*
7 *Maria Kleine, RN 119983*, the Missouri State Board of Nursing executed and issued a Joint
8 Agreed Order, effective April 6, 2010, wherein Respondent voluntarily surrendered her license to
9 practice as a registered nurse in the State of Missouri. Pursuant to the Settlement Agreement's
10 Joint Stipulation of Facts, the Missouri Board and Respondent had entered into a prior Settlement
11 Agreement on December 22, 2009 ("2009 Agreement"), in which Respondent admitted that she
12 violated the Missouri Nursing Practice Act and that the Board had sufficient grounds to discipline
13 her. Respondent admitted in the 2009 Agreement that in early 2008, while employed at St.
14 John's Mercy Medical Center in Springfield, Missouri, she had diverted narcotics from St. Johns
15 for her own personal use. The narcotics that Respondent diverted included Morphine,
16 Lorazepam, Hydrocodone, Oxycodone, Hydromorphone, and Alprazolam, all controlled
17 substances.

18 **JURISDICTION FOR PETITION TO REVOKE PROBATION**

19 10. This Petition to Revoke Probation is brought before the Board of Registered Nursing
20 (Board), Department of Consumer Affairs, under Probation Term and Condition Number 10 of
21 the Decision and Order in the Matter of the Statement of Issues Against: Kamilah Khan, Case
22 No. 2002-175. That term and condition states:

23 If Respondent violates the conditions of her probation, the Board after giving the
24 Respondent notice and an opportunity to be heard, may set aside the stay order and
impose the stayed revocation of Respondent's license.

25 If during the period of probation, an accusation or petition to revoke probation has
26 been filed against Respondent's license or the Attorney General's Office has been
27 requested to prepare an accusation or petition to revoke probation against the
Respondent's license, the probationary period shall automatically be extended and shall
28 not expire until the accusation or petition has been acted upon by the Board.

1 FIRST CAUSE TO REVOKE PROBATION

2 (Comply With the Board's Probation Program)

3 11. At all times after the effective date of Respondent's probation, Condition 2 stated:

4 Respondent shall fully comply with the conditions of the Probation Program
5 established by the Board and cooperate with representatives of the Board in its monitoring
6 and investigation of the Respondent's compliance with the Board's Probation Program.
7 Respondent shall inform the Board in writing within no more than 15 days of any address
8 change and shall at all times maintain an active, current license status with the Board,
9 including during any period of suspension.

10 Upon successful completion of probation Respondent's license shall be fully restored.

11 12. Respondent's probation is subject to revocation because she failed to comply with
12 Probation Condition 2, referenced above. The facts and circumstances regarding this violation
13 are that Respondent failed to inform the Board in writing within no more than 15 days of any
14 address change and failed to maintain an active, current license status with the Board.

15 SECOND CAUSE TO REVOKE PROBATION

16 (Residency, Practice, or Licensure Outside of State)

17 13. At all times after the effective date of Respondent's probation, Condition 4 stated:

18 Periods of residency or practice as a registered nurse outside of California shall not
19 apply toward a reduction of this probation time period. Respondent's probation is tolled,
20 if and when she resides outside of California. The Respondent must provide written
21 notice to the Board within 15 days of any change of residency or practice outside the state,
22 and within 30 days prior to re-establishing residency or returning to practice in this state.

23 Respondent shall provide a list of all states and territories where she has even been
24 licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall
25 further provide information regarding the status of each license and any changes in such
26 license status during the term of probation. Respondent shall inform the Board if she
27 applies for or obtains a new nursing license during the term of probation.

28 14. Respondent's probation is subject to revocation because she failed to comply with
Probation Condition 4, referenced above. The facts and circumstances regarding this violation
are that Respondent failed to provide written notice to the Board within 15 days of any change of
residency or practice outside the state. Further, Respondent failed to notify the Board of the
disciplinary action against her Missouri registered nursing license.

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1. Revoking the probation that was granted by the Board of Registered Nursing in Case No. 2002-175 and imposing the disciplinary order that was stayed thereby revoking Registered Nurse License No. 648902 issued to Maria Kamilah Kleine, also known as Kamilah Khan;

3. Ordering Maria Kamilah Kleine, also known as Kamilah Khan, to pay the Board of Registered Nursing the reasonable costs of investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

DATED: March 8, 2012

SA2011102002
10843444.doc

Exhibit A

Decision and Order

Board of Registered Nursing Case No. 2002-175

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

KAMILAH KHAN

Respondent.

Case No. 2002-175

OAH No. L2002120423

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on November 26, 2004.

IT IS SO ORDERED this 27th day of October, 2004.

Sandra R. Erickson

President
Board of Registered Nursing
Department of Consumer Affairs
State of California

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of
Issues Against:

KAMILAH KHAN,
910 E. Grand Ave., Apt. #9
El Segundo, CA 90245

Respondent.

Case No. 2002-175

OAH No. L2002120423

PROPOSED DECISION

Administrative Law Judge Michael A. Scarlett, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on May 25, 2004.

Stephen A. Mills, Deputy Attorney General, represented Complainant Ruth Ann Terry.

Kamilah Khan (hereinafter "Respondent") was present at hearing and represented herself.

Oral and documentary evidence was taken and the record was held open until August 2, 2004, to allow Respondent an opportunity to submit additional documentary evidence regarding the status of her Missouri and Arizona nursing licenses and her rehabilitation. After receiving additional documentation from Respondent, the matter was submitted on August 2, 2004.¹

¹ On June 4, 2004, Respondent submitted a May 26, 2004 letter from the Arizona State Board of Nursing regarding the status of Respondent's Arizona nursing license. This document was marked as Respondent's Exhibit "H" and admitted into evidence without objection by Complainant. On June 21, 2004, Respondent submitted a June 1, 2004 letter from the Missouri Department of Economic Development regarding the probationary status of her Missouri registered nursing license. This document was marked as Respondent's Exhibit "I" and admitted into evidence without objection by Complainant. On July 1, 2004, Respondent submitted a June 18, 2004, letter of recommendation from Jordan B. Basco, RN, Director of Orthopedics and Acute Rehab at the Phoenix Baptist Hospital. This document was marked as Respondent's Exhibit "J" and admitted into evidence without objection by Complainant.

FACTUAL FINDINGS

1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") issued the Statement of Issues solely in her official capacity as the Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer Affairs.

2. On August 2, 2001, Respondent submitted to the Board an Application for RN Licensure by Endorsement. Respondent disclosed in her application to the Board that her Missouri registered nursing license had been disciplined. Respondent's application was denied by the Board on November 7, 2001. On June 12, 2002, the Board issued a Statement of Issues requesting that Respondent's application be denied pursuant to Business and Professions Code sections 2736, 2761, subdivision (a)(4), and 480, subdivision (a). The Board alleged that Respondent had committed acts which constituted unprofessional conduct and which would give grounds for suspension and revocation of a California registered nursing license. The Board alleged that Respondent's Missouri registered nursing license had been placed on probation for three (3) years based upon Respondent's conduct in diverting an unknown quantity of Demerol from her place of employment (hospital) for her own use. On July 29, 2002, Respondent filed a Notice of Defense and the above captioned hearing ensued.

3. On June 22, 2001, the Missouri State Board of Nursing placed Respondent's registered nursing license on probation for three (3) years. The Missouri Board found that Respondent had diverted Demerol from her place of employment for her own personal use from approximately November 5, 1997 until December 10, 1997. Respondent's conduct is substantially related to the practice of nursing because it evidences a present or potential unfitness of a registered nurse to perform nursing functions in a manner consistent with the public health, safety, or welfare. Respondent's Missouri probationary period successfully terminated in June 2004.

4. Respondent testified that she took the Demerol to self-medicate severe pain she was experiencing as a result of a series of oral surgeries that resulted in an infection and osteomyelitis.² According to Respondent, her oral surgeon improperly diagnosed her as having a problem with a wisdom tooth when in fact she had an upper jaw bone infection and osteomyelitis. The oral surgeon failed to properly treat the pain she was experiencing from the osteomyelitis. As a result of the severe pain and her inability to obtain appropriate pain medication from her doctors, Respondent began to inject Demerol out of her nursing unit's Pyxis machine on the days that she worked. Over a period of six to eight weeks, Respondent took Demerol three to four times per week when she worked to combat her pain.

5. Respondent admitted she took the Demerol when she was confronted by her employer. She agreed to enter the Employee Assistance Program in which she received

² Osteomyelitis is defined as "the inflammation of bone caused by a pyrogenic organism. It may remain localized or may spread through the bone to involve the marrow, cortex, cancellous tissue, and periosteum." (Dorland's Illustrated Medical Dictionary, (28th ed. 1994) p. 1201.)

detoxification and counseling. However, Respondent was ultimately terminated by the hospital when she withdrew from the hospital's drug treatment program. Respondent believed that she no longer needed the treatment program because her Demerol usage was an isolated incident which had been addressed by proper diagnosis and treatment of her osteomyelitis. Following her termination from the Missouri hospital, Respondent worked at four different facilities through employment agencies until February 2001. In February 2001, she married and in March 2001, Respondent moved to California where she applied for a registered nursing license in July 2001.

6. From July 2001, until July 2003, Respondent exhausted most of her life savings and endured a divorced while she tried to find employment as a registered nurse. In September 2003, Respondent moved to Arizona where she applied to the Arizona State Board of Nursing for a registered nursing license. In February 2004, Respondent was issued a probationary license by the Arizona State Board of Nursing, which placed her license under a 12-month probation with terms and conditions, including monthly random drug testing. Respondent's Arizona probation is scheduled to terminate in February 2005.

7. In March 2004, Respondent began working as a registered nurse at Phoenix Baptist Hospital in the orthopedic nursing unit. Respondent is supervised by Jordan B. Basco, RN, Director of Orthopedics and Acute Rehab. She also is assigned to a "Charge Nurse" who supervises Respondent during her shift. Mr. Basco submitted a letter of recommendation on Respondent's behalf stating that she has "consistently demonstrated professionalism, dedication to her work, and caring for her patients." Mr. Basco stated that Respondent's Missouri disciplinary incident had not been an issue, as regular chart audits and random drug testing are implemented as part of general hospital policy. As of the date of hearing, Respondent continued to live and work in Arizona at Phoenix Baptist Hospital.

8. Respondent's testimony at hearing was honest and forthright. Her explanation for why she diverted and used Demerol in 1997 was plausible and sympathetic, although she clearly understood her conduct was unacceptable and irresponsible. Respondent regrets her actions but feels the severe pain she experienced as a result of the wrong diagnosis clouded her reasoning in 1997. Respondent's demeanor at hearing was that of a person who was sincerely contrite and remorseful. She is confident that she has overcome the unfortunate episode in 1997. Respondent shows no indication that she suffers any symptoms of chemical dependency which would lead to a repeat of the 1997 incident.

9. Since 1997, there is no evidence that Respondent has used any controlled substance whatsoever. Respondent has successfully completed her Missouri probation which required that she undergo periodic random drug and alcohol testing. Respondent submitted evidence of her drug screening and testing which showed that she has abstained from the use of any drug or controlled substance from July 2001 through February 2004. As an additional condition of probation, Missouri required that Respondent undergo chemical dependency and mental health evaluations which Respondent successfully completed. The Missouri Board of Nursing confirmed that as of June 1, 2004, Respondent was in compliance with all of the

terms and conditions of her probation and that on June 22, 2004, her probation would terminate.

10. Respondent has also been subject to drug screenings and testing by the Arizona State Board of Nursing which also revealed negative test results in March 2004.

11. Respondent submitted numerous letters of recommendation that attest to her good character and proficiency as a registered nurse. Several of the letters of recommendation were from former employers with whom Respondent worked after the 1997 incident in Missouri, all of whom stated they would not hesitate to rehire Respondent. Some of the letters, including Respondent's current employer, acknowledged awareness of Respondent's drug incident and indicated that there had not been any issues regarding drug use or abuse during her employment.

12. There is sufficient evidence in this record to conclude that Respondent's diversion and use of Demerol in 1997 was an isolated incident. Respondent has shown that she does not pose an unacceptable risk to the health, safety, and welfare of the public if she is allowed to obtain a registered nursing license with the appropriate restrictions.

LEGAL CONCLUSIONS

1. Cause exists to deny Respondent's application for a registered nursing license pursuant to Business and Professions Code sections 2761, subdivision (a)(4) and 480, subdivision (a)(3), in that Respondent's State of Missouri registered nursing license was disciplined in 2001 as a result of her taking and using a controlled substance from her place of employment, by reason of Factual Findings 2, 3, 4, 5, and 6.

2. Cause exists to deny Respondent's registered nursing license application pursuant to Business and Professions Code section 480, subdivision (a)(3), in that Respondent committed acts which would subject a nursing license to suspension or revocation, by reason of Factual Findings 2, 3, 4, 5, and 6.

3. Cause exists to deny Respondent's registered nursing license application pursuant to Business and Professions Code sections 2761, subdivision (a) and 480, subdivision (a)(2), in that Respondent commit an act involving dishonesty, fraud, or deceit, with the intent to benefit herself, or substantially injure another, by reason of Factual Findings 2, 3, 4, 5, and 6.

4. Respondent has shown sufficient evidence of rehabilitation and mitigation such that the issuance of a properly restricted registered nursing license would not be against the public's interest, by reason of Factual Findings 4, 7, 8, 9, 10, 11, and 12.

When determining whether an applicant has been sufficiently rehabilitated to perform nursing functions in a manner consistent with public health, safety, and welfare, the Board considers: (1) the nature and severity of the acts or crimes; (2) evidence of any additional,

subsequent acts which also could be considered grounds for denial; (3) the time that has elapsed since commission of the acts or crimes; (4) the extent to which the applicant has complied with the terms of parole, probation, restitution, or other sanctions; and (5) evidence of rehabilitation submitted by the applicant. (Cal. Code of Regs., tit. 16, § 1445, subd. (a).) Respondent has sufficiently shown that her conduct in diverting and using Demerol in 1997 was an isolated incident caused by an unfortunate set of medically related circumstances and her poor judgment, as set forth in Factual Findings 4 and 7 through 12.

The Board's disciplinary guidelines recommend a minimum of three years (3) probation for the conduct which resulted in Respondent's license discipline in Missouri in 1997. However, Respondent's registered nursing license has been on probation for the 1997 Missouri incident since June 2001 in Missouri and is currently on probation in the State of Arizona for one year for the same incident. Given Respondent's successful completion of three years probation in Missouri and her current one year probation being served in Arizona without incident or violation, it would not be inappropriate to depart from the Board's recommended term of probation and order a two year probationary period in this case. As stated above, there is no evidence that Respondent poses a significant risk to the public's health, safety, or welfare at this time. A one year probation, in conjunction with the four years she will have served under the Missouri and Arizona probationary periods will adequately protect the public's interest in this case.

ORDER

The application of Respondent Kamilah Khan for licensure as a registered nurse is hereby granted and a license shall be issued to Respondent upon successful completion of all licensing requirements. Said license shall immediately be revoked, the order of revocation stayed and Respondent placed on probation for a period of two (2) years on the following conditions:

SEVERABILITY CLAUSE

Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

(1) **OBEY ALL LAWS** Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

(2) **COMPLY WITH THE BOARD'S PROBATION PROGRAM** Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate

with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, Respondent's license shall be fully restored.

(3) **REPORT IN PERSON** Respondent, during the period of probation, shall appear in person at interviews/ meetings as directed by the Board or its designated representatives.

(4) **RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE** Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when she resides outside of California. The Respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing license during the term of probation.

(5) **SUBMIT WRITTEN REPORTS** Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to Respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he or she has a registered nurse license.

(6) **FUNCTION AS A REGISTERED NURSE** Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for six (6) consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If Respondent has not complied with this condition during the probationary term, and the Respondent has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

(7) EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to her employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, Respondent shall notify the Board in writing within seventy-two (72) hours after she obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after she is terminated or separated, regardless of cause, from any nursing or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

(8) SUPERVISION Respondent shall obtain prior approval from the Board regarding Respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

- (a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.
- (b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours Respondent works.
- (c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with Respondent at least twice during each shift worked.

(d) Home Health Care - If Respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with Respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by the Respondent with or without Respondent present.

(9) EMPLOYMENT LIMITATIONS Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict Respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If the Respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

(10) VIOLATION OF PROBATION If a Respondent violates the conditions of her probation, the Board after giving the Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed revocation of Respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

(11) LICENSE SURRENDER During Respondent's term of probation, if she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, Respondent may surrender her license to the Board. The Board reserves the right

to evaluate Respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be subject to the conditions of probation.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- (1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
- (2) One year for a license surrendered for a mental or physical illness.

(12) ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS

Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the Respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of Respondent's history of substance abuse and will coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis Respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.


(14) SUBMIT TO TESTS AND SAMPLES Respondent, at her expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. The Respondent is responsible for keeping the Board informed of Respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when she is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and the respondent shall be considered in violation of probation.

In addition, Respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If Respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend Respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

If Respondent fails to participate in a random biological fluid testing or drug screening program within the specified time frame, the respondent shall immediately cease practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

DATED: August 30, 2004


MICHAEL A. SCARLETT
Administrative Law Judge
Office of Administrative Hearings

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7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues Against:

Case No. 2002-175

12 **KAMILAH KHAN**
910 E. Grand Avenue, Apt. #9
13 El Segundo, CA 90245,

STATEMENT OF ISSUES

14 Respondent.

15
16 Ruth Ann Terry, M.P.H., R.N. ("Complainant") for causes for denial for Kamilah
17 Khan's application for licensure as a registered nurse alleges:

18 **PARTIES**

19 1. Complainant brings this statement of issues solely in her official capacity as
20 the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs.

21 2. On or about August 2, 2001, Kamilah Khan ("Respondent") submitted to the
22 Board of Registered Nursing an Application for RN Licensure by Endorsement. Respondent
23 certified to the truth and accuracy of the contents of the application on July 30, 2001. The
24 application was denied on or about November 7, 2001.

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STATUTORY PROVISIONS

3. Section 2736 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board of Registered Nursing ("Board") may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

4. Section 2761 of the Code states, in pertinent part, that "[t]he board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

"....

"(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States; by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action."

5. Section 480 of the Code states, in pertinent part:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

"....

"(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or;

"(3) Done any act which if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

"The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made."

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1 6. Drug

2 "Demerol," a brand of meperidine hydrochloride, a derivative of pethidine, is a
3 Schedule II controlled substance as designated by Health and Safety Code section 11055(c)(17).

4 FIRST CAUSE FOR DENIAL OF APPLICATION

5 (Discipline by Another State)

6 7. Respondent's application is subject to denial under section 2761, subdivision
7 (a)(4) of the Code on the grounds of unprofessional conduct in that on or about June 22, 2001,
8 pursuant to the Findings of Fact Conclusions of Law and Disciplinary Order, entitled "State
9 Board of Nursing v. Kamilah Kahn [Khan], RN 119983," the Missouri State Board of Nursing
10 ("Missouri Board") placed respondent's registered nurse license on probation for three (3) years
11 with terms and conditions for violating section 335.066.2 (1)(5)(12)(14) RSMo 1994 (use or
12 unlawful possession of any controlled substance; incompetency, misconduct, gross negligence,
13 fraud, misrepresentation or dishonesty; violation of any professional trust or confidence; and
14 violation of the drug laws or regulations of the State of Missouri, any other state or federal
15 government).

16 SECOND CAUSE FOR DENIAL OF APPLICATION

17 (Any Act, If Done By a Licentiate Which Would be Grounds for Suspension
18 or Revocation of a License)

19 8. Respondent's application is subject to denial under section 480, subdivision
20 (a)(3) of the Code, in that she committed acts that gave rise to the discipline noted in paragraph 7
21 above, that would be grounds for suspension or revocation of a license under section 2761,
22 subdivision (a) (unprofessional conduct) of the Code, as defined by section 2762, subdivisions
23 (a)(2) (obtained a controlled or dangerous drug, in violation of § 11173(a) of the Health & Saf.
24 Code; possessed a controlled drug, in violation of § 4140 of the Code; and self-administered a
25 controlled or dangerous drug without a prescription) of the Code. The facts and circumstances
26 surrounding the Missouri Board's disciplinary action are that in or about 1997, while on duty as a
27 registered nurse at a hospital in the State of Missouri, she did the following:

28 ///

1 a. She obtained an unknown quantity of Demerol by fraud, misrepresentation,
2 and dishonesty, by unlawfully taking the drug from the hospital supply for her own use.

3 b. She possessed an unknown quantity of Demerol that she unlawfully took
4 from the hospital supply for her own use;

5 c. She self-administered an unknown quantity of Demerol that she unlawfully
6 took from the hospital supply.

7 **THIRD CAUSE FOR DENIAL OF APPLICATION**

8 (Any Act, If Done By a Licentiate Which Would be Grounds for Suspension
9 or Revocation of a License)

10 9. Respondent's application is subject to denial under section 480, subdivision
11 (a)(3) of the Code, in that her registered nurse license was disciplined by the Missouri Board,
12 which would be grounds for suspension or revocation of a license under section 2761,
13 subdivision (a)(4).

14 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

15 (Any Act Involving Dishonesty, Fraud or Deceit)

16 10. Respondent's application is subject to denial under sections 2761,
17 subdivision (a) and 480, subdivision (a)(2) of the Code, in that in or about 1997, she was guilty
18 of an act involving dishonesty, fraud, or deceit, with the intent to substantially benefit herself, or
19 substantially injure another, by virtue of the factual allegations as set forth in paragraph 8.

20 **PRAYER**

21 WHEREFORE, Complainant requests that a hearing be held on the matters herein
22 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

23 1. Denying the application of Kamilah Khan for licensure as a registered nurse;

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2. Taking such other and further action as deemed necessary and proper.

DATED: 01/12/02


RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California

Complainant

03579-110-LA2002AD0395

